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July 31, 2002

Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

RE: New England Power Company, D.T.E. 02-33
Canal Electric Company, Cambridge Electric Light Company, Commonwealth Electric Company, D.T.E. 02-34
Connecticut Light and Power Company, D.T.E. 02-35

Dear Secretary Cottrell:

The Attorney General opposes the petitions filed by New England Power Company ("NEP"), Canal Electric Company, Cambridge Electric Light Company and Commonwealth Electric Company (collectively "NSTAR") and Connecticut Light and Power Company ("CL&P") related to the sale of Seabrook Nuclear Power Station ("Station"). The Department should not approve the transactions underlying these petitions as fair or in the public interest unless Massachusetts customers receive the same favorable treatment regarding the sharing of excess decommissioning funds that the customers of the state of New Hampshire, (the state, along with Connecticut, that ran the auction and negotiated the sale) receive. Under the Purchase and Sale Agreement ("P&S") for the Station, the residents of New Hampshire will receive a share of any excess decommissioning funds, while the residents of Massachusetts may not. Exh. NSTAR-3, § 5.10(h)(ii); New Hampshire Statutes 162-F:21-b(II)(c).

In these proceedings NSTAR asks the Department of Telecommunications and Energy ("Department"): (1) to approve the sale of Canal's interest in the Station to Florida Power and Light Energy Seabrook, LLC ("FPL"); (2) to approve the Ninth Amendment to Power Contract by and between Canal, Cambridge, and Commonwealth, which provides for Cambridge and Commonwealth's buyout of any and all obligations with respect to purchasing Station-generated power from Canal; and (3) find that the divested assets qualify as eligible facilities for exempt wholesale generator ("EWG") status under Section 32(c) of the Public Utility Holding Company

Act of 1935, codified as 15 U.S.C. § 79z-5a ("PUHCA"). NEP also seeks approval of the sale of NEP's interest in the Station to FPL and asks that the Department issue findings that would allow the divested assets to qualify as "eligible facilities" under PUHCA. CL&P, a Connecticut utility, seeks findings for EWG status because the Department exercises jurisdiction over the rates of Western Massachusetts Electric Company ("WMECo"), an affiliate of CL&P.

The Station is an operational, 1,161-megawatt nuclear generating unit located in Seabrook, New Hampshire. All but three of the Station's joint owners offered their combined 88.23 percent interest in the Station for sale in a public auction. NEP owns approximately 9.96 percent in the Station, Canal owns approximately 3.52 percent and CL&P owns approximately 4.059 percent. At the direction of the New Hampshire and Connecticut public utility commissions, J.P. Morgan Securities, Inc. ("J.P. Morgan") conducted the auction. The Department did not participate in this auction process. J. P. Morgan selected FPL as the lead bidder and engaged in negotiations over the purchase and sale agreement. The Massachusetts utilities, NEP and NSTAR, were excluded from direct involvement in the auction process and bidder negotiations. Tr. pp. 119, 123.

After a procedural conference on June 10, 2002, the Department held expedited evidentiary hearings on July 1 and 2, 2002 to consider the petitions. NSTAR presented as witnesses Robert H. Martin and Paul M. Dabbar, auction advisor and J. P. Morgan employee. CL&P presented Donald M. Bishop and NEP presented Terry L. Schwennesen.

In evaluating the petitioners' requests to divest the Station, the Department must first determine whether the sale process was equitable and structured to maximize the value of the assets being sold. *Western Massachusetts Electric Company*, D.T.E. 00-68, pp. 12-13 (2001). In making these determinations, the Department considers whether the company used a "competitive auction or sale" that ensured "complete, uninhibited, non-discriminatory access to all data and information by any and all interested parties seeking to participate in such auction of sale." G. L. c. 164, § 1A(b)(2).

During his cross-examination of the Company's witnesses, the Attorney General posed questions regarding the sharing of excess funds on delayed decommissioning, among others areas of concern related to the sale. Tr. pp. 104-105. It is clear from the record that New Hampshire law requires the Station owners to return to New Hampshire customers any excess funds that remain after decommissioning. Although the selling Massachusetts owners intended that § 5.10(h)(ii) of the P&S with FPL would put Massachusetts customers on an equal footing with New Hampshire customers, there is dispute over the actual legal effect of that section of the P&S on the sharing of excess decommissioning funds. *Id*. The P&S should be fair to the Massachusetts customers who have contributed to the decommissioning fund through rates they paid. In order to be consistent with past nuclear divestiture cases before the Department, *See Western Massachusetts Electric Company*, D.T.E. 01-99, p. 6 (2002), as a well Federal Energy Regulatory Commission regulations, 18 C.F.R. §§35.32(a)(6) and (7) (excess decommissioning funds to be returned to customers), the Department should condition the sale and requests for EWG status upon FPL returning to Massachusetts customers a share of excess decommissioning funds to Massachusetts customers, equal to their ownership share.

The Department did not have any input into the auction process, and the Massachusetts selling owners did not participate in the final negotiations with the FPL. The utility commissions of New Hampshire and Connecticut, along with J. P. Morgan, controlled the

auction process which resulted in an agreement that does not treat Massachusetts consumers fairly. As implicit in FPL's cross-examination during the hearings, FPL placed economic value on New Hampshire's favorable treatment and reduced the overall purchase price that it bid for the station to compensate for the fact that New Hampshire, by itself, would share in any excess decommissioning funds. Tr. pp. 51-56, 119-120. This reduction in bid price reduced all of the joint owners' proceeds, including those of the Massachusetts companies. Therefore, the companies have not met their requirement to maximize the amount of proceeds from the sale of their generation assets. *Western Massachusetts Electric Company*, D.T.E. 00-68, pp. 12-13 (2001).

The Department, under these circumstances, should approve the petitions of the companies only upon the following conditions. First, Massachusetts customers should be granted the same treatment as the customers of New Hampshire or Connecticut, whichever group is most advantaged. Second, there must be no "staged closings" that omit either of the Massachusetts utilities, NEP or NSTAR, from the sale. If the sharing of excess decommissioning funds is not fair or if a staged closing prevents a Massachusetts utility from receiving its fair share of the benefits of the maximum mitigation from the sale, then the Department should not deem the auction process equitable or value maximizing. For the same reasons, the Department must deny EWG status to all petitioners, since CL&P must not benefit from the sale at the expense of Massachusetts customers.

Sincerely,

Alexander J. Cochis
Assistant Attorney General

cc: Service list